

EXHIBIT 2

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	
)	Case No. 2:12-cv-01282-JLR
Plaintiff,)	
)	CITY OF SEATTLE’S UNOPPOSED
v.)	MOTION FOR COURT APPROVAL OF
)	REVISIONS TO SEATTLE POLICE
CITY OF SEATTLE,)	DEPARTMENT’S USE OF FORCE
)	POLICIES
Defendant.)	NOTE ON MOTION CALENDAR: August
)	16, 2019
)	
)	
)	

The City of Seattle moves for an order approving the proposed revisions of the Seattle Police Department (“SPD”) to its Use of Force Policies. The Department of Justice (“DOJ”) and the Monitor have approved the proposed revisions. They are attached in redline format as Exhibits A-G.¹

I. Background

The Consent Decree required SPD to draft or revise policies addressing its core topics. The City drafted, revised, and implemented those policies with the assistance of the Monitor, the

¹ Grammatical and formatting changes are not reflected in the redline. To make the redline easier to read, if text was moved, unchanged, that change is not reflected.

1 Department of Justice (“DOJ”), and the Community Police Commission (“CPC”), and with the
 2 approval of the Court and Monitor in the years leading to the Court’s January 2018 ruling that the
 3 City had achieved full and effective compliance with the Consent Decree.

4 During the sustainment period following full and effective compliance, the City, DOJ, and
 5 the Monitor agreed that SPD would review Consent-Decree-mandated policies annually, consult
 6 with the DOJ and Monitor about any proposed changes, and seek Court approval of any changes.
 7 *See* Phase II Sustainment Period Plan (dkt. 444) at 10. In accordance with the schedule
 8 established by the Court-approved Sustainment Plan, the City now submits revisions to SPD’s
 9 Use of Force Policy, set forth in Title 8 of the Seattle Police Manual.

10 **II. SPD’s Policy Review Process**

11 SPD’s Audit, Policy, and Research section (“APRS”) is primarily responsible for the
 12 policy review process at SPD. APRS is led by a captain who reports to the assistant chief who
 13 oversees SPD’s Professional Standards Bureau (“PSB”). Within APRS, a “policy squad”
 14 consisting of a sergeant and three detectives takes responsibility for policy reviews. APRS
 15 currently maintains a calendar that ensures that every policy in the Seattle Police Manual is
 16 reviewed at least once every three years. APRS reviews Consent Decree policies annually.

17 SPD’s standing policy committee helps guide APRS’s work. The committee, comprised
 18 of the APRS Captain, the Assistant Chief overseeing PSB, SPD’s Executive Director of Legal
 19 Affairs, and its Chief Operating Officer, meets weekly (along with APRS officers assigned to the
 20 policies under review) to discuss scheduled policy reviews and any acute policy concerns that
 21 have come to the committee’s attention. Those concerns can be raised by any SPD unit or bureau
 22 chief, but they often come directly from the recommendations of SPD’s Force Review Board,
 23 which meets weekly to review the most serious uses of force by SPD officers, as well as less

serious uses of force as dictated by policy. Patrol officers are also encouraged to contact APRS directly to discuss policy issues.

APRS also incorporates policy suggestions from many sources. The Office of Police Accountability (“OPA”) routinely submits letters to the Chief of Police, many of which focus on policy change recommendations.² The Office of the Inspector General for Public Safety (OIG) participates in SPD policy discussions, in addition to making policy recommendations through reports and audits. In addition, APRS has shared its policy review calendar with the CPC, which offers suggestions about policy changes.

For most policies, APRS develops proposed changes in coordination with the Assistant Chief overseeing PSB by consulting with SPD subject-matter experts and the SPD units most impacted by the policy under review. When appropriate, APRS detectives also reach out to police departments across the country to review policies addressing the same topics. Once APRS has completed proposed policy changes, the standing policy committee reviews them and, if it approves, forwards the revised policy to the Chief of Police (or her designee, typically the Deputy Chief) for final approval.

Consent Decree policies are reviewed in much the same way, with a few additional steps. Once APRS and the policy committee have approved proposed changes, the City forwards the proposed changes to the Monitoring Team and DOJ for review and input. Where the DOJ or Monitoring Team identify concerns, the City discusses those concerns and, where appropriate,

² OPA publishes its Management Action Recommendations and SPD’s responses at <https://www.seattle.gov/opa/management-action-recommendations>.

1 makes additional modifications. The City also solicits feedback from OIG, OPA, and CPC. Once
2 that process is complete, the City submits the policies to the Court for approval.

3 Once a policy change receives final approval (from the Chief of Police, her designee, or
4 the Court, depending on the policy), SPD uses its “e-Directive” system to notify every officer and
5 civilian employee. The e-Directive system forwards policy changes to everyone at SPD, it
6 requires each employee impacted by the policy (for the use of force policy, this includes all sworn
7 personnel) to answer online questions about the policy and verify that he or she has reviewed it.
8 Unit supervisors are notified and expected to take corrective action when officers or employees in
9 their units have not completed e-Directive certifications. For policy changes that require training
10 to implement, SPD also ensures that each officer mandated to complete the training has done so.

11 **III. Proposed Changes to Use of Force Policy**

12 The proposed revisions to Title 8 accomplish several goals. First, the revisions bring greater
13 consistency to force-related terms and definitions. A second set of edits is intended to increase
14 operational efficiency. Third, SPD, working closely with the Monitor, has developed a new policy
15 for the use of patrol canines. Finally, several of the proposed policy changes incorporate OPA
16 recommendations.

17 *1. A majority of the proposed revisions consolidate and refine the definitions and usage of* 18 *force-related terms.*

19 The proposed edits reduce repetition and provide consistency by consolidating definitions
20 that used to be in section 8.200 with the other definitions in 8.050. The proposed revisions also
21 address minor variations in terminology to avoid confusion. For example, the requirement that
22 force must be “objectively reasonable, necessary, and proportional”—which appears in numerous
23

places throughout Title 8—is now always stated using those exact words, instead of sometimes using slightly different wording as shorthand.

Another example includes replacing the term “serious physical injury” with “great bodily harm.” The current policy treats these phrases as interchangeable. By consistently using “great bodily harm,” a term which is codified and defined under Washington state law, the proposed revisions improve clarity and uniformity. *See* Rev. Code Wash. 9A.04.110(4)(c) (defining “great bodily harm”). For the same reason, “substantial physical injury” has been replaced by “substantial bodily harm.” *See* Rev. Code Wash. 9A.04.110(4)(b) (defining “substantial bodily harm”).

In addition, small variations in the definitions used in Title 8 and the SPD Force Investigation Team (FIT) manual have been standardized.

2. SPD proposes several changes that will increase operational efficiency.

Section 8.500 has been edited to formalize SPD’s existing practice of having operations lieutenants conduct the final review chain-of-command review for most Type I force. As noted by the Monitor and DOJ last October, this delegation is already current practice and it does not reduce the quality of the review. Dkt. 497-1 at 23. It is frequently practical and convenient for the operations lieutenant, instead of the captain, to review Type I force, because of the great volume of material. However, as noted by the Monitor and DOJ, it is important that delegation be done appropriately and not in a way that undermines effective review. *See id.* The operations lieutenant is well positioned to ensure effective review. There is only one operations lieutenant per precinct, which preserves continuity of command. Moreover, the operations lieutenant has an active role in field supervision, is regularly called upon to serve as the acting captain, and communicates frequently with the captain. The operations lieutenant is thus in a strong position to identify and,

1 with the captain, address any potential issues with Type I force overall or with a particular officer's
 2 Type I force.

3 Another minor operational change involves FIT. Language is added to 8.300-POL-9
 4 regarding inadvertent contact with a subject's neck. This edit relieves FIT of screening and
 5 investigating when an officer makes such contact while using a control technique, when the contact
 6 is "momentary," and when there is no risk that blood or oxygen flow was restricted. This revision
 7 appropriately maintains FIT's efforts on more serious uses of force.

8 Further edits are made to clarify lieutenants' and captains' existing authority to reclassify
 9 force at a higher or lower level if warranted by the sergeant's investigation. *See* 8.400-POL-2(11).
 10 The chain has in the past been reluctant to reclassify force, generally deferring to FRU or FRB.
 11 Correcting misclassifications of force early on in the review process will improve efficiency.

12 *3. The most substantive change is the adoption of a new, proposed canine policy.*

13 Based on the insights of the Force Review Board, SPD command staff, OPA, OIG, the
 14 Monitor, and DOJ, the Department identified the need for a new policy addressing the use of patrol
 15 canines. An interim policy took effect on March 20, 2019, and was accompanied by substantial
 16 training efforts. The Deputy Chief of Operations and the Assistant Chief of Special Operations
 17 met with members of the K-9 unit and the training sergeant to reiterate the Department's
 18 expectations on the use of canines as a force tool. In addition, six of the canine officers received
 19 additional, outside training to support implementation of the new policy. In parallel, the Deputy
 20 Chief of Operations oversaw the drafting of a robust permanent policy, with substantial technical
 21 assistance from the Monitor. The City now presents this policy to the Court.

22 The policy includes specific language governing when officers are required to release a
 23 canine's bite. 8.300-POL-1(13) (Bite must be released "at the first possible moment the canine can

1 be safely released.”). This provision is intended to eliminate any possibility of confusion as to
2 when and how a handler should release a dog from a bite.

3 The policy also addresses the circumstances under which canines may be deployed. The
4 policy provides that, in the absence of explicit supervisor authorization, canines will be deployed only
5 in investigations of enumerated felony crimes and misdemeanors that present a potential for violence.
6 8.300-POL-1(3) (listing out specific felonies and misdemeanors). The policy also places strong
7 restrictions on the use of canines in investigations with a possible juvenile subject. 8.300-POL-1(8).
8 Also, importantly, officers are explicitly prohibited from using a canine to gain pain compliance.
9 8.300-POL-1(9).

10 To ensure that canines are deployed in appropriate circumstances, canine handlers are
11 required to obtain a briefing of the incident beforehand. 8.300-POL-1(4).

12 It is significant that the new policy defines a canine-officer team is a “single officer unit.”
13 8.300-POL-1(6). That means officers cannot consider the dog as a second, back-up officer. Rather,
14 canine officers must request back-up when needed in the same way that other officers do.

15 The policy also reiterates the reporting and investigation requirements that apply for any
16 canine use of force, regardless whether a bite is accidental or otherwise. 8.300-POL-1(16) to (18).

17 Finally, a new section is added to Title 16, addressing patrol operations, that contains
18 procedures and tasks associated with the canine unit.

19 *4. A number of policy changes incorporate OPA management action recommendations.*

20 In addition to investigating allegations of misconduct, OPA recommends policy changes
21 to SPD when its investigations indicate that issues with Department policy, rather than actions of
22 individual officers, gave rise to a complaint. Those investigations result in a finding of “Not
23

1 Sustained – Management Action” and form the basis of OPA’s management action
2 recommendations.

3 Examples of these recommendations include a new definition of “roadblock” in 8.050 and
4 additional language about roadblocks in 8.300-POL-6(4). These edits clarify what a roadblock is
5 and when it is considered to be reportable force. In another example, the de-escalation policy is
6 revised in order to more clearly distinguish between a threat of force (which is is not de-escalation),
7 and a warning given in a calm and explanatory manner (which can be an example of de-escalation).
8 OPA also recommended clarifying that each application of a taser must be objectively reasonable,
9 necessary, and proportional—regardless of how the taser is being used. 8.300-POL-2(4).

10 **IV. Conclusion**

11 For the reasons stated above, the City respectfully requests that the Court approve the
12 proposed revisions to SPD’s policies.

13
14
15 DATED this 31st day of July, 2019.

16 For the CITY OF SEATTLE

17
18 PETER S. HOLMES
Seattle City Attorney

19 s/ Kerala T. Cowart
20 Kerala T. Cowart, WSBA #53649
Assistant City Attorney
21 Seattle City Attorney’s Office
701 Fifth Avenue, Suite 2050
22 Phone: (206) 733-9001
Fax: (206) 684-8284
23 Email: kerala.cowart@seattle.gov

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CERTIFICATE OF SERVICE

I hereby certify that on July 31st, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Brian T. Moran	bmoran@usdoj.gov
Christina Fogg	Christina.Fogg@usdoj.gov
Matt Waldrop	james.waldrop@usdoj.gov
Gregory Colin Narver	gregory.narver@seattle.gov
Kerry Jane Keefe	kerry.keefe@usdoj.gov
Peter Samuel Holmes	peter.holmes@seattle.gov
Jeff Murray	jeff.murray@usdoj.gov
Ronald R. Ward	Ron@wardsmithlaw.com
Timothy D. Mygatt	timothy.mygatt@usdoj.gov
Gary T. Smith	gary.smith@seattle.gov
Hillary H. McClure	hillarym@vjmlaw.com
David A. Perez	dperez@perkinscoie.com
Anna Thompson	annathompson@perkinscoie.com
Kristina M. Detwiler	kdetwiler@unionattorneysnw.com
Merrick Bobb	mbobb@pacbell.net
Bruce E.H. Johnson	brucejohnson@dwt.com
Eric M. Stahl	ericstahl@dwt.com

DATED this 31st day of July, 2019, at Seattle, King County, Washington.

s/ Kerala T. Cowart
Kerala T. Cowart, WSBA #53649
Assistant City Attorney
E-mail: kerala.cowart@seattle.gov

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)
) Case No. 2:12-cv-01282-JLR
Plaintiff,)
) **[PROPOSED] ORDER GRANTING CITY**
v.) **OF SEATTLE’S UNOPPOSED MOTION**
) **FOR COURT APPROVAL OF**
CITY OF SEATTLE,) **REVISIONS TO SPD’S POLICIES**
)
Defendant.)
_____)

This matter came before the Court on the City of Seattle’s Unopposed Motion for Court Approval of Revisions to Seattle Police Department (“SPD”)’s Use of Force Policies.

The Court GRANTS the motion and orders as follows:

- (1) The Court approves SPD’s proposed revisions to its Use of Force Policies attached to the City’s Motion as Exhibits A-I; and
- (2) SPD may distribute the revised policies to its officers and civilian employees and incorporate the revisions into the Seattle Police Manual (<http://www.seattle.gov/police-manual>).

DATED this _____ day of August 2019.

Hon. James L. Robart
United States District Court Judge

Presented by:

PETER S. HOLMES
Seattle City Attorney

s/ Kerala T. Cowart
Kerala T. Cowart, WSBA #53649
Assistant City Attorney
Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Phone: (206) 733-9001
Fax: (206) 684-8284
Email: kerala.cowart@seattle.gov

**[PROPOSED] ORDER GRANTING CITY OF SEATTLE'S
UNOPPOSED MOTION FOR COURT APPROVAL OF REVISED
SPD POLICIES - 2**
(12-CV-01282-JLR)

Peter S. Holmes
Seattle City Attorney
701 Fifth Avenue, Suite 2050
Seattle, WA 98104
(206) 684-8200
SEA 00240613

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2019, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to the following:

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Kerry Jane Keefe	kerry.keefe@usdoj.gov
Peter Samuel Holmes	peter.holmes@seattle.gov
Jeff Murray	jeff.murray@usdoj.gov
Ronald R. Ward	Ron@wardsmithlaw.com
Timothy D. Mygatt	timothy.mygatt@usdoj.gov
Gary T. Smith	gary.smith@seattle.gov
Hillary H. McClure	hillarym@vjmlaw.com
David A. Perez	dperez@perkinscoie.com
Anna Thompson	annathompson@perkinscoie.com
Kristina M. Detwiler	kdetwiler@unionattorneysnw.com
Merrick Bobb	mbobb@pacbell.net
Bruce E.H. Johnson	brucejohnson@dwt.com
Eric M. Stahl	ericstahl@dwt.com

DATED this 31st day of July, 2019, at Seattle, King County, Washington.

s/ Kerala T. Cowart
 Kerala T. Cowart, WSBA #53649
 Assistant City Attorney
 E-mail: kerala.cowart@seattle.gov

EXHIBIT C

Proposed Revisions to Seattle Police Manual § 8.100

8.100 - De-Escalation

Effective Date: **DRAFT**

De-escalation may take the form of scene management, team tactics, and/or individual engagement. Even when individual engagement is not feasible, de-escalation techniques including scene management and team tactics such as time, distance, and shielding, should still be used unless doing so would create undue risk of harm to any person due to the exigency/threat of a situation.

Commented [A1]: Moved these sentences up for emphasis because they go to the heart of de-escalation

De-escalation tactics and techniques are actions used by officers, when safe and **feasible** without compromising law enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of voluntary compliance. See 8.050.

~~De-escalation may take the form of scene management, team tactics, and/or individual engagement. Even when individual engagement is not feasible, de-escalation techniques including scene management and team tactics such as time, distance, and shielding, should still be used unless doing so would create undue risk of harm to any person due to the exigency/threat of a situation.~~

When safe and feasible under the totality of the circumstances, officers shall attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution. ~~De-escalation may take the form of scene management, team tactics, and/or individual engagement. Even when individual engagement is not feasible, de-escalation techniques including scene management and team tactics such as time, distance, and shielding, should still be used unless doing so would create undue risk of harm to any person due to the exigency/threat of a situation.~~

Commented [A2]: This language duplicates earlier language

The overall goal of this policy is to promote thoughtful resolutions to situations and to reduce the likelihood of harm to all persons involved. De-escalation is reviewed and evaluated under the totality of the circumstances present at the time of the incident.

1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Shall Use De-Escalation Tactics in Order to Reduce the Need for Force

2

(a). Officers shall conduct a threat assessment so as not to precipitate an unnecessary, unreasonable, or disproportionate use of force by placing themselves or others in undue jeopardy.

(b). Team approaches to de-escalation are encouraged and should consider officer training and skill level, number of officers, and whether any officer has successfully established rapport with the subject. Where officers use a team approach to de-escalation, each individual officer's obligation to de-escalate will be satisfied as long as the officer's actions complement the overall approach.

(c). Selection of de-escalation options should be guided by the totality of the circumstances with the goal of attaining voluntary compliance; considerations include:

~~(+)~~ Communication

Using communication intended to gain voluntary compliance, such as:

- Verbal persuasion

- Advisements and warnings (including Taser ~~spark~~ **display tests** to explain/warn prior to Taser application), **given in a calm and explanatory manner,**
[Exception]: Warnings given as a threat of force are not considered part of de-escalation.

Commented [A3]: Spark display is the correct terminology, spark test is to ensure the Taser is working.

Commented [A4]: Exception added in response to OPA Management Action 2019-COMP-001 differentiating an explanation versus a threat.

- Clear instructions

- Using verbal techniques, such as Listen and Explain with Equity and Dignity (LEED) to calm an agitated subject and promote rational decision making

- Avoiding language, such as taunting or insults, that could escalate the incident

Considering whether any lack of compliance is a deliberate attempt to resist rather than an inability to comply based on factors including, but not limited to:

- Medical conditions
- Mental impairment
- Developmental disability

- Physical limitation
- Language barrier
- Drug interaction
- Behavioral crisis
- Fear or anxiety

~~-(ii)-~~ Time

- Attempt to slow down or stabilize the situation so that more time, options and resources are available for incident resolution.
- Scene stabilization assists in transitioning incidents from dynamic to static by limiting access to unsecured areas, limiting mobility and preventing the introduction of non-involved community members.
- Avoiding or minimizing physical confrontation, unless necessary (for example, to protect someone, or stop dangerous behavior)
- Calling extra resources or officers to assist, such as CIT or Less-Lethal Certified officers

~~-(iii)-~~ Distance

- Maximizing tactical advantage by increasing distance to allow for greater reaction time.

~~-(iv)-~~ Shielding

- Utilizing cover and concealment for tactical advantage, such as:
 - Placing barriers between an uncooperative subject and officers
 - Using natural barriers in the immediate environment